

**§ 1208.33 Failure to nominate.**

If any group of qualified wholesale handlers, producers that are qualified handlers, importers that are qualified handlers, persons who produce cut flowers and greens, or traditional retailers fails to nominate individuals for appointments as members or alternates of the Council, the Secretary may appoint individual(s) from the appropriate segment(s), region(s), or area(s) of the industry to fill the vacancy or vacancies. The failure of any nominee to promptly indicate the nominee's willingness to serve in such manner as may be prescribed by the Secretary shall be treated as a failure to nominate.

**§ 1208.34 Term of office and compensation.**

(a) The term of office for each member or alternate member of the Council shall be three years. As provided in the Act, the initial appointments on the Council shall be as follows: nine of the member appointments shall be for two-year terms, eight of the appointments shall be for three-year terms, and eight of the appointments shall be for four-year terms. Alternate members shall have the same terms of office as their respective members. The term of office on the initial Council shall be apportioned as follows:

(1) One of the two qualified wholesale handler members representing each of Regions 1, 2, 4, and 5 shall serve two-year terms of office; one of the two qualified wholesale handler members representing each of Regions 3, 4, and 6 shall serve three-year terms of office; and one of the two qualified wholesale handler members representing each of Regions 1, 2, 3, 5, and 6 shall serve four-year terms of office.

(2) The two qualified wholesale handler members representing the United States at large shall serve terms of office of two years and three years respectively.

(3) The members representing producers that are qualified handlers from Production Areas 1 and 2 shall serve three-year terms of office, and the member representing producers that are qualified handlers from Production Area 3 shall serve a four-year term of office.

(4) The three members representing importers that are qualified handlers shall serve terms of office of two, three, and four years respectively.

(5) The members representing producers that produce cut flowers and greens east and west of the Mississippi River shall each serve two-year terms of office.

(6) The member representing retailers nominated by the AFMC shall serve a two-year term of office. The two members representing retailers not nominated by the AFMC shall serve three-year and four-year terms of office respectively.

(b) No member of the Council may serve more than two consecutive terms of three years, except that any member serving an initial term of four years or two years may serve an additional term of three years.

(c) The term of office for the initial Council shall begin immediately following appointment by the Secretary. Should the term of office of the initial Council begin before January 1, 1995, the time between appointment and January 1, 1995, shall not count towards the initial term of office. Should the term of office of the initial Council begin later than January 1, 1995, all time until the following January will count as a full year toward the terms of office set out in this section. In subsequent years, the term of office shall begin on January 1 or such other period which may be recommended by the Council and approved by the Secretary.

(d) Members of the Council shall serve without compensation, but each member or alternate member acting in place of a member shall be reimbursed for the expenses incurred in performing duties as a member of the Council.

**§ 1208.35 Vacancies.**

(a) Should any Council member position become vacant, the alternate of that member shall automatically assume the position of said member. Candidates for the vacant alternate member position which resulted from the alternate filling the vacant member position shall be nominated in the manner specified in §§ 1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

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(b) Should the positions of both a member and such member's alternate become vacant, Candidates to serve the unexpired terms of office for such member and alternate shall be nominated in the manner specified in §§1208.31 and 1208.32. *Provided*, That a vacancy will not be required to be filled if the unexpired term is less than six months.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, if a member of the Council fails to submit reports and remit assessments required under this part, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon a showing of adequate cause, if the Secretary determines that the person's continued service would be detrimental to the achievement of the purposes of the Act.

### **§ 1208.36 Procedure.**

(a) Thirteen (13) Council members, including alternates acting in place of members of the Council, shall constitute a quorum: *Provided*, That such alternates shall serve only when the member is absent from a meeting or is disqualified. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at an assembled meeting, and, when in the opinion of the chairperson of the Council such action is considered necessary, or for matters of an emergency nature when there is not enough time to call an assembled meeting, the Council may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, facsimile, or by other means of communication: *Provided*, That each member or alternate acting for a member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be

promptly confirmed in writing. All votes shall be recorded in the Council minutes.

### **§ 1208.37 Executive committee.**

(a) The Council is authorized to appoint an executive committee of not more than nine persons from among its members. Initially, the executive committee shall be composed of the following:

(1) Four members representing qualified wholesale handlers;

(2) Two members representing producers that are qualified handlers;

(3) Two members representing importers that are qualified handlers; and

(4) One member representing traditional retailers.

(b) After the initial appointments, each appointment to the executive committee shall be made so as to ensure that the committee reflects, to the maximum extent practicable, the membership composition of the Council as a whole.

(c) Each initial appointment to the executive committee shall be for a term of two years. After the initial appointments, each appointment to the executive committee shall be for a term of one year.

(d) The Council may delegate to the executive committee the authority of the Council under this subpart to hire and manage staff and conduct the routine business of the Council consistent with such policies as are determined by the Council.

## **ACTIVITIES OF THE COUNCIL**

### **§ 1208.40 Duties of the Council.**

The Council shall have the following duties, in addition to the duties specified in other sections of this subpart:

(a) Administer this subpart in accordance with the terms and provisions of this subpart;

(b) Make rules and regulations to effectuate the terms and provisions of this subpart;

(c) Appoint members of the Council to serve on the executive committee, as provided in §1208.37;

(d) Employ such persons as the Council determines are necessary, and set the compensation and define the duties of the persons;